

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Present:
MR. Justice Nadeem Akhtar.
MR. Justice Muhammad Iqbal Kalhoro.

Date	Order with signature of Judge
Agha Siraj Durrani	C.P.No.D-2356 of 2019
Mrs. Naheed Durrani	C.P.No.D-1637 of 2020
Agha Shahbaz Ali Khan	C.P.No.D-1638 of 2020
Sara Durrani	C.P.No.D-1639 of 2020
Shahana Durrani	C.P.No.D-1640 of 2020
Sonia Durrani	C.P.No.D-1641 of 2020
Tufail Ahmed Shah	C.P.No.D-1776 of 2019
Mitha Khan & others	C.P.No.D-1850 of 2019
Shamshad Khatoon	C.P.No.D-1851 of 2019
Gulzar Ahmed	C.P.No.D-2976 of 2019
Zulfiqar Ali Dahar	C.P.No.D-2236 of 2019
Aslam Pervez Langha	C.P.No.D-2235 of 2019
Shakeel Ahmed Soomro	C.P.No.D-6623 of 2019
Syed Muhammad Shah	C.P.No.D-8474 of 2019
Ghulam Murtaza	C.P.No.D-584 of 2020
Gulbahar Lohar Baloch	C.P.No.D-585 of 2020
Munawar Ali	C.P.No.D-586 of 2020
Muhammad Irfan	C.P.No.D-1559 of 2021

Petitioners.

Vs.

National Accountability Bureau

Respondents.

Mr. Amer Raza Naqvi advocate for the petitioner in C.P. No.D-2356 of 2019.
Mr. Shahab Sarki advocate for the petitioners in C.P. Nos. D-2356 of 2019, 1637, 1638, 1639, 1640 & 1641 of 2020.
Mr. Dur Muhammad Shah advocate for the petitioner in C.P. No.D-1776/2019
Mr. Rehman Ghous advocate for the petitioners in C.Ps. No.D-1850, No. D-1851 2235, 2236 of 2019, 584, 585, 586 of 2020 & 1559 of 2021 a/w Mr. Raghim Ibrahim Junejo advocate.
Mr. Salahdin Ahmed advocate for the petitioner in C.P. No.D-2976 of 2019.
Mr. Had Pangawala & Zain Mustafa Soomro advocate for the petitioner in C.P. No.D-6623 of 2019.
Syed Muhammad Shah C.P.No.D-8474 of 2019.
Mr. Riaz Alam, Special Prosecutor, NAB.
Asif Raza, Deputy Director, NAB/I.O. of the case.
Mr. Irfan Ahmed, DAG.
Date of hearing: **20.09.2021, 21.09.2021, 23.09.2021, 27.09.2021, 28.09.2021 and 04.10.2021.**
Date of order: **13.10.2021.**

ORDER

MUHAMMAD IQBAL KALHORO J: Petitioners, accused in reference No.13/2019, were extended a relief of pre and post arrest bail by this Court vide order dated 13.12.2019 in listed petitions. NAB not satisfied with the order challenged the same before the Honorable Supreme Court in CPLA

No.1128/2019, disposed of vide order dated 17.03.2021 remanding the case back to this Court for deciding the petitions afresh in the light of guidelines laid down in the cases reported in **PLD 2018 SC 40**, **PLD 2005 SC 364** and **PLD 2019 SC 250** encompassing principles regulating grant or refusal of pre and post arrest bail to an accused. This special bench was constituted in compliance by the Honorable Chief Justice of this court vide office order dated 31.08.2091 after appointment of Honorable Mr. justice Muhammad Ali Mazhar as judge of the Honorable Supreme court who was fist assigned this bench to head.

2. The case mainly revolves around allegations against accused Agha Siraj Durani, present Speaker Sindh Assembly, for committing corruption and corrupt practices and amassing a fortune of Rs.1,721,129,871.00 through illegal means while acting as a Minister of Local Government Department, Govt. of Sindh (12.04.2008 to 20.03.2013) and in his current position as the Speaker, Sindh Assembly (30.05.2013 onwards). Other petitioners, accused in the reference, said to be his family members, associates, agents, domestic workers, gunmen, etc., are identified as Benamidar/ostensible owners of the properties actually owned and possessed by him. They have been alleged to be aiding and abetting him in the offence and are either holding assets or having been acting on his behalf in acquiring the assets by carrying on bank transactions at his behest. Yet there is another set of accused, Government officials, having worked with or under him, who are also accused of same allegations. A detail of moveable and immoveable properties allegedly acquired/held by Agha Siraj Durani is mentioned in the schedule attached with this order at the end (from pages 17 to 19).

3. Reference and Investigation Report show that the IO has calculated all his income, claimed and declared by him before relevant authorities for tax and election purpose, and has spotted a difference of Rs.1,610,669,528.00 between his assets on the paper and his belongings truly held by him and his family members. His declared income (1985 to 2018) without expenditure has been estimated as Rs.110,460,343.00 and with expenditure as RS.82,927,218.00 But his true wealth consisting of several movable and immovable properties has been computed as Rs.1,721,129,871.00. When the outlay including money spent by him and his family on travels abroad was deducted from this amount, unaccounted difference of Rs.1,610,669,528.00 between his declared income and assets and his actual income and belongings surfaced.

4. Learned defense counsel in order to impress their case for bail have submitted very lengthy arguments spread over many dates of hearing. The gist of their arguments, if showcased, however would be that the petitioners are innocent, have been falsely implicated in the case out of political rivalry; investigation is full of illegalities and irregularities; the Chairman NAB has issued warrant against the petitioners arbitrarily without any substance to justify the same; petitioner Agha Siraj Durani in his tax returns has declared all the properties; is a big Zamindar (Landlord) of the area having 3500 acres of agricultural land; has inherited a huge agricultural land from his forefathers; his agricultural income has not been counted, and if it is done would explain the gap, alleged to exist, between his declared wealth and his true assets; he was not afforded a fair chance in the investigation to put up his case and explain the income and the properties he has acquired from; his family has been implicated without an ounce of evidence against them; his family members have been given property by him; they have never held any public office and they are not alleged to have committed any offence; he has no connection with other accused or their assets and that there is absolutely no evidence collected in this regard by NAB.

5. It was further contended that evidence collected in the investigation is sketchy and does not furnish necessary details to tie the accused in a non-bailable offence; and this is why pending trial, a fresh call up notice has been issued by NAB to some of the petitioners respecting same allegations that testifies to an undeniable fact of hasty investigation earlier and filing of reference; such development has made the case against the petitioners to be one of further enquiry; there is a reasonable explanation supported by cogent accounts behind acquiring each and every property by Agha Siraj Khan Durani but NAB has utterly failed to heed the same; that the whole investigation and filing of the reference smack of mala fide on NAB's part and the aim is to fix the petitioners at any cost; although several properties against co-accused/petitioners have been shown in the reference but there is absolutely no evidence to evince their nexus with Agha Saraj Khan Durani; none of the seller or purchaser of the properties have been made witness to lend credence to the accusations; that scope of petition under Article 199 of the Constitution is larger than the one u/s 497 and 498 CrPC and relief of bail is to be considered in the backdrop of fundamental rights of the accused enshrined in chapter 1 of Part II of the constitution.

6. Mr Dur Muhammad Shah advocate appearing for accused Tufail Ahmed Shah did not dispute allegations levelled against him in para No. 29

of the reference. He said that he was gunman of Agha Saraj Khan Durani and his wife Naheed Durani had given him cash of Rs.33,500,000.00 for getting a pay order issued from the bank. He had to oblige and then it i.e. pay order was used for purchasing the property. He had given the said statement to the IO and was being treated as a witness. But when the reference was filed he was arraigned therein.

7. Mr. Salahddin Ahmed appearing for accused Gulzar Ahmed contended that he has no concern with Agha Saraj Khan Durani. However, he has been working as a broker dealing with sale and purchase of the properties. Co-accused Shakeel Ahmed Soomro had approached him for buying certain properties; he facilitated him in this regard purely in professional manner without being aware of any story behind such dealings. Not a single penny earned through such trades ever ended up in his bank account nor such evidence has been retrieved by NAB. Besides his work as a broker, he is 33% partner in the sweets-business of Rahmat-e-Shreen having branches all over the country; that he has been earning handsomely from such business which he has declared in his tax returns regularly. This, he urged to explain transactions of Rs.600 million reflected in his bank account and mentioned in para No. 32 of the reference. Further clarifying the point, he iterated that this figure identifies the usual credit entries in his account and are acutely staggered over more than 5 years (2014 to 2019) and have nothing to do with the allegations of aiding and abetting accused Agha Saraj Khan Durani to acquire the alleged properties. In order to convince us about entitlement of petitioner to the relief of pre-arrest bail, he said that as per latest view of the Honorable Supreme court expressed in Civil Petitions No.3637 & 3638 of 2019, presence of element of malice on the part of complainant or prosecution is not sine qua non for extending such relief to an accused. Merits of the case are equally important and have to be examined for deciding right of accused to such relief. He then traced, by citing the case law from the year 1949 to the year 2021, history of evolution of concept of pre arrest bail which we somehow found highly educatory.

8. To support their respective cases for bail, learned defense counsel relied upon following case law reported in **PLD 2001 SC 607, PLD 2014 Sindh 28, PLD 2009 SC 507, YLR 2009 2414, 2010 SCMR 1697, PLD 2004 Lahore page 155, 2003 SCMR 150, 2003 MLD 777 and SBLR 2007 Sindh 755, PLD 2013 SC 594 & 2011 SCMR 136** and unreported judgment dated 19.08.2020 passed in **C.P. No.D-2975/2019**, which we have perused and taken guidance from.

9. Learned special prosecutor NAB, DAG and IO have opposed relief of bail to the petitioners. They have submitted that NAB has not acted on account of any malice against the petitioners. But only in terms of a complaint that Agha Saraj Khan Durani had accumulated assets beyond his known sources of income the enquiry was ordered. He and his family members were called through call up notices to explain their wealth. They filed documents detailing number and value of the properties. But, when in the investigation sellers and purchasers of those properties were examined. They narrated a quite different value either paid or received by them. When it was calculated, a difference wholly incommensurate with the figure provided by accused Agha Saraj Khan Durani surfaced, which he could not justify despite opportunities given. He did not deny ownership of the properties on the one hand, and on the other utterly failed to forward a reliable explanation integrating his income with the value of the assets purchased by him. He further stated that statements of the sellers and purchasers and numerous bank officials issuing the pay orders are part of the record that provide sufficient evidence against the petitioners to believe their involvement in the offence. Per him, the documentary evidence in the shape of copies of pay orders, etc. showing that co-accused acted on his behalf and added him in purchasing and disposing of the properties has been collected, and that it has been established that they are the Benmidars and holding properties on his behalf. He then took us to relevant documents of assets of Agha Siraj Durani, his wealth statements, articles recovered from the bank lockers, statements of the witnesses, etc. to establish his and other accused's nexus with the offence. He next stated that accused Agha Saraj Khan Durani is an influential person and if he was allowed to remain on bail, chances are high, that he would tamper with the evidence and force the witnesses into giving obliging statement in his favor. He then quoted the infamous case of fake bank account, which according to him was transferred by the Honorable Supreme Court from Karachi to Islamabad on the basis of such apprehension. They relied upon following case law to support. **2019 MLD 433, 2021 SCMR 449, 2021 SCMR 1166, 2011 YLR 144 & 2010 SCMR 1697, a judgment dated 16.06.202 in Civil Petitions No.3637 & 3638 of 2019, order dated 13.07.2021 in Criminal Petition No.408-L of 2021, order dated 205.2021 in C.P. No.D3295 of 2018 of this court and PLD 2021 SC 738.**

10. Heard and perused. Main allegation of accumulating wealth beyond known sources of income is directed against accused **Agha Siraj Khan Durani**. In the investigation, his declared income (1985 to 2018) through all

sources without spending has been calculated as Rs.110,460,343.00 and with outlay as RS.82,927,218.00 But true value of his wealth, movable and immovable properties held either by him or Benamidars and the proceeds found in the bank lockers belonging to him, without expenditure, has been computed as Rs.1,721,129,871.00., and a difference of Rs.1,610,669,528.00 between his declared income and assets and his actual income and belongings, after deducting outlay which includes money spent by him and his family on travels abroad.

11. Learned counsel for Agha Siraj Durani did not seriously dispute ownership of such assets, bank lockers, etc. His contention however was that the estimation made by NAB to determine value of his assets is lopsided and not supported by any document, his inheritance and possessions since the year 1985 have not been determined, and that his agriculture income from 3500 acres of land has not been added in the calculation. But, with respect, we find these arguments factually incorrect. Para No.4 of the reference specially alludes in addition to his other incomes from assorted sources to his agricultural income specifically. Although no evidence qua size of the land i.e.3500 acres, or income from it has been placed on record, but even if we presume any such income, the difference would still be insurmountable, and howsoever high an estimation from such income is allowed to be predicted, it is unlikely to fill up or come closer to the yawning gap (Rs.1,610,669528.00) between his declared income and holdings, and the wealth actually held by him.

12. NAB's case to have figured out/calculated such difference in his income and assets is not based *prima facie* on any hypothesis. It is the result of figure of actual money disclosed by PWs viz. sellers and purchasers, in their statements u/s 161 CrPC, to have either paid or received to or from Agha Siraj Durani; evaluation by the experts of value of items retrieved from the bank lockers i.e. gold, Rolex watches, foreign currency etc.; and estimation of value of properties held by his Benamidars and his family members. Copies of pay orders got issued from banks, by his servants or the officials working with him, is yet another *prima facie* piece of evidence against him in this respect. In rebuttal, nothing tangible has been offered to persuade us to hold that the textual and oral evidence against him is not sufficient to believe his involvement in the offense. Barring stressing over vast scope of constitutional jurisdiction of this court under Article 199 (i) (c) of the constitution, his counsel in augments offered nothing tangible to account for unaccounted wealth Agha Siraj Durani has

been *prima facie* found in possession of and a big house in a posh area (DHA) of Karachi in which he with his family, without an apparent title, has been residing since 2011.

13. As to his argument highlighting alleged lacunas, irregularities or illegalities in the investigation and its prospective benefit to the accused, we may clarify that it is settled in law that if there is any illegality or irregularity in the investigation, the same would be cured after the trial court or the Magistrate, as the case may be, takes cognizance of the offence. For favour of this view, the case of **Mushtaq Hussain and another Vs. the State (2011 SCMR 45)** can be referred to. In the case in hand, since the trial court has already taken cognizance of the offence, the lacuna etc. if any, in the investigation stands cured. When this is the position in law, no benefit in the shape of bail on this score, in our view, can be extended to the petitioner. In view of such outlook on the point and *prima facie* sufficient material connecting him with the properties, not at all denied, we do not find him entitled to concession of bail.

14. As to the argument that the Chairman NAB has issued warrant of arrest against the petitioners arbitrarily without any substance to justify it. We may refer to a recent judgment dated 16.06.2021 in **civil petitions No.3637 & 3638 of 2019**, relied upon by both the parties. The Honorable Supreme Court in para No.5 has held that Article 9 of the constitution is a cherished fundamental right of a person, which, inter alia, guarantees right to liberty, **which may be curtailed “save in accordance with law.”** The phrase “save in accordance with law” implies that not only should the procedural requirements of the law be fully met but also its substantive content i.e. there must be sufficient material/evidence on the record that can justify the application of such a law. Therefore, material/evidence must be sufficient enough to persuade the constitutional court to deprive an individual of his fundamental right. In the case reported in **PLD 2018 SC 40** the Honorable Supreme Court has laid down that an accused can obtain post arrest bail on a tentative assessment of material if he is able to show that there are no reasonable grounds for believing that he has committed a non-bailable offence, and secondly there are sufficient grounds for further inquiry into his guilt. Meaning thereby that in presence of sufficient material/evidence and reasonable grounds to believe that an accused has committed the offence, his fundamental right to liberty enshrined in Article 9 can be curtailed and he can be taken into custody. Viewed in this backdrop, the contention in hand does not seem to be sustainable. The inference i.e. sufficient

evidence either reached by the court or the Chairman NAB against an accused, in congruity with exception “**except/save in accordance with law**” provided under Article 9 of the constitution allowing departure from guarantee to right to liberty held out to an individual thereunder, shall warrant issuance of a warrant against him. Therefore, we do not see any illegality to extend benefit thereof to the petitioner in the warrant issued against him when there is sufficient evidence, underpinned by the view expressed in this order, and reasonable grounds to believe his involvement in the alleged offence.

15. The other petitioners, shown as Benmidars, have been found affiliated with accused Agha Siraj Khan Durani in one capacity or the other as family members, servants, associates, gunmen, etc. Their association with him and active participation in buying and selling the properties at his behest is perceptible from the material available on record. Some of the properties being physically enjoyed by accused Agha Siraj Khan Durani are found still standing in their name in the record. One of them is accused **Zulfiqar Ali Dehar** (C.P.No.D-2236/2019), who has remained his private secretary when he was the Minister, Local Government Department. He got a pay order of Rs.49,728,343.00, used for buying a property by accused Agha Siraj Khan Durani, issued from a bank. He did not join investigation, despite being called upon, to put up his defense in this regard. Nor his counsel in his arguments could furnish a cogent exegesis about any source he got the money from or for what purpose he had the said pay order issued.

16. In addition, this accused has been found to have a commercial plaza built on a plot No.8-C DHA phase II. Karachi, ostensibly entered in the name of his wife **Shamshad Khatoon** (C.P.No.D-1851/2019), who is also an accused. She is not only shown as the declared owner of that property but has been found related to sale and purchase of at least one more expensive property in DHA Karachi involving an amount of Rs.26,500,000.00. Their counsel in arguments tried to justify the same by filing few Photostat copies of documents and stating that she had a lucky draw twice on prize bonds that fetched her enough amount to get all those properties. But to us, this exposition seemed to be postscript. Neither at the stage of investigation nor at the time of filing of this petition were this plea and documents presented for consideration. All the necessary details about alleged prize bonds i.e. entries made in the relevant register for purchasing or encashing them, source of finance, announcement-date of result, etc. are completely lacking. Then she herself is a government

employee, a teacher, and it is incumbent upon her to declare in her tax returns not only her properties but also the source used to buy them. However, no such document has been placed on record or referred to by her counsel in the hearing to establish such claim. In absence thereof, no positive opinion in favour of these petitioners to extend them extraordinary relief of pre arrest bail can be formed. She and her husband have not only failed to account for their wealth, but by trying to conceal true ownership of the assets have actively participated in the alleged offence also. Furthermore, the plea and the documents, her counsel referred to, constitute only defense which the petitioners can present in the trial court at the relevant time for consideration. Any inference influenced by these documents will require deeper appreciation of evidence, which admittedly we cannot undertake here.

17. Petitioner **Munwar Ali** (C.P.No.D-586/2020) has worked with accused Agha Siraj Khan Durani as his driver. He is found connected with at least 3, detected yet, highly expensive properties. He purchased a 500 sq. yards plot in phase-VI DHA Karachi in the year 2011, built a house, and sold it in the year 2014. He also purchased a Toyota Tundra, besides acquiring 40 acres of land in district Malir, Karachi, a very expensive area, and deposited Rs.24 million in govt. treasury to pay fee Challan for this purpose. His counsel did not deny in arguments that he was a driver. Yet, he strenuously defended him by claiming that one Muhammad Iqbal is the actual owner of the land and the petitioner is his servant. And to support this fact he filed affidavit of said Muhammad Iqbal that he is the owner of the land in Malir. Which we find totally implausible. No material qua his right to the land, stewardship of the petitioner to look after the land on his behalf, source of money, his application for allotment, allotment order, his possession of the land, seeking a legal remedy in the face of denial of his claim by NAB, etc. is on record. More so, the petitioner did not join the investigation to put up this claim before the IO and now, since it is not part of the prosecution case, it is but a defense which the petitioner may furnish before the trial court for consideration. Further, in regard to two properties i.e. a car and a plot admittedly having remained in his name, nothing was offered in arguments by the petitioner's counsel to deny it. We therefore not only on merits but also on account of absence of any evidence to show his implication in the case is motivated by malice, do not find him entitled to pre arrest bail.

18. Petitioner **Muhammad Irfan** (C.P.No.D-1559/2021) is found an ostensible owner of a bungalow in phase-V DHA Karachi estimated to be

worth Rs.240 million. That he purchased in the year 2011 and since then accused Agha Siraj Khan Durani has been living there with his family, and he not for a single day has resided therein. No plausible explanation for such status quo has been forwarded by him in his petition. He has only pleaded that being owner of a bungalow is not an offence. But has utterly disregarded, in the wake of allegations against him, to tell the resource utilized by him to purchase such property and in what capacity he has let accused Agha Siraj Khan Durani live in his bungalow. His connection with him as his Benamidar thus is but obvious. And this position, besides highlighting the active part of petitioner Muhammad Irfan in the offence, reaffirms the case of NAB against accused Agha Siraj Khan Durani that he is the actual owner of the properties ostensibly held by his agents, cronies, etc. as Benamidars. Furthermore, he did not join the investigation to put his case before the IO. Us he tried to convince in hearing that he is the landlord and accused Agha Siraj Khan Durani is the tenant. But such claim is neither borne out of his petition nor sustained by any other material to inveigle us to agree to him. In any case, it requires deeper appreciation of evidence to find out candor of what he has argued before us. Which, admittedly we are not permitted to do in exercise of constitutional jurisdiction, and more importantly in absence of any evidence led in the trial on this issue. He may, if so advised, agitate his case before the trial court on this point for consideration. But as far as his credentials to qualify him for pre arrest bail are, as discussed above, there is *prima facie* sufficient evidence against him plus there is no material to show his implication by NAB in this case on account of any disingenuous motive.

19. Petitioner **Shakeel Ahmed Soomro** (C.P.No.D-6623/2019) is town officer of Garhi Yasin, district Shikarpur, home town of accused Agha Siraj Khan Durani. He was found engaged in buying and selling two very expensive properties in DHA Karachi. The money found to have exchanged his hands in this respect runs in myriad millions. Further he is found to have established a liaison for this purpose i.e. sale and purchase with petitioner Gulzar Ahmed whose counsel in his arguments did not deny this fact. But explained that Gulzar Ahmed was a broker and had dealt with him professionally only; had received money from him and then passed on to the party concerned as per business mores. Which is *prima facie* a glaring indictment of the role ascribed to the petitioner in the reference. When it is considered together with evidence of holding of assets by him, ostensibly beyond his means, in his name in Karachi furnishes sufficient material to believe his involvement in the alleged offence. Nothing in arguments was

convincingly agitated by his counsel to negate his part, otherwise established from relevant documents, in the alleged offense. Therefore, we are of a view that he is connected with the alleged offence and is not entitled to the relief of pre arrest bail.

20. Petitioner **Gulbahar Lohar Baloch** (C.P.No.D-585/2020), servant cum gunman of accused Agha Siraj Khan Durani, has been found to have purchased a plot of 1000 sq. yards in DHA Karachi in the year 2013, have built a house thereon and sold it finally. He earned Rs.212,500,000.00 from this transaction. His counsel was not able to justify it, nor the fact, as to why then he is still a man of meager means and has not become a man of means. While working with accused Agha Siraj Khan Durani he was able to clinch such a deal in itself is a pointer to his role in the offence, that is, he has been facilitating him in accumulating property from illegal means. In presence of such *prima facie* evidence, sufficient enough to believe his involvement in the case, he is not entitled to grant of pre arrest bail.

21. Petitioner **Tufail Ahmed Shah** (C.P.No.D-1776/2019), a police constable, was gunman of accused Agha Siraj Khan Durani when he was Minister Local Government Department. He is found to have actively assisted him in purchasing a property/bungalow in phase-V DHA Karachi for Rs.33,500,000.00 by getting pay orders of that amount from UBL issued in his name. In investigation, he denied his role but the papers collected from the bank negated his claim. His counsel did not try to deny his part and said the money for pay orders was provided to him by wife of accused Agha Siraj Khan Durani. He however insisted that petitioner, being a gunman, had no choice but to act as directed. Be that as it may, we while deciding his right to pre arrest bail cannot hold that his apparent act of aiding accused Agha Siraj Khan Durani to acquire a property clandestinely was a bona fide act sans any *mens rea* on his part. Such a determination would require deep appreciation of evidence which the trial court is best suited to undertake. The petitioner, if so advised, may lead evidence on this issue before the trial court for consideration. He is *prima facie* connected with the alleged offense that is not even denied by him and which is further discernible from copies of pay orders retrieved from the bank record. In presence of such evidence, and when there is no *mala fide* on the part of NAB to implicate him in the case, in our view he is not entitled to relief of pre arrest bail.

22. Petitioner **Mitha Kan** (C.P.No.D-1850/2019), a driver in Local Government Department, aided accused Agha Siraj Khan Durani like

Petitioner Tufail Ahmed Shah in acquiring a property against Rs.46,000,000.00 in phase-VI DHA Karachi by getting pay orders issued in his name. He denied his role in the investigation. But bank record goes against him and implicates him in the alleged offence. His counsel in arguments could not offer any plausible explanation of his indulgence in such huge amount despite being a low-paid employee, nor could he refute his nexus with accused Agha Siraj Khan Durani in such circumstances. No case for pre arrest bail, in presence of such *prima facie* evidence, in his favour is made out.

23. Petitioner **Syed Muhammad Shah** (C.P.No.D-8474/2019), is identified to have purchased at least three properties in DHA Karachi through pay orders using his name on behalf of accused Agha Siraj Khan Durani. Two were the plots purchased in the name of Munwar Ali and Ghulam Murtaza, who are co-accused and have been drivers of accused Agha Siraj Khan Durani. Third property, a commercial plaza in DHA, he purchased, is in the name of Agha Shahbaz Ali s/o Agha Siraj Khan Durani. His specific part, supported by bank record i.e. pay orders got issued by him and used in purchase of the properties as above, in absence of any malice on the part of NAB to implicate him in the offence, does not make him entitled to relief of pre arrest bail.

24. Some of the learned counsel in arguments by raising the question of fresh call up notice issued to some of the petitioners, mostly Benamidars, for further investigation in the matter, urged that it shall suffice to make result of earlier investigation doubtful and the case requiring further enquiry into guilt of the petitioners. We however do not feel persuaded by such viewpoint. A fresh notice to the accused after filing of the reference does not mean the result of investigation held earlier or the cognizance taken by the court on the basis thereof would be rendered useless and inconsequential. The investigation of a matter, until its logical end in the court of law, technically never ends. If during the trial some fresh evidence qua same transaction is found or found to be in possession of the same accused, there is no bar in law that the same cannot be presented in the court for consideration, or for such purpose the accused cannot be subjected to further investigation. This dispensation neither in its approach nor in consequence is illegal or unlawful. So if some of the petitioners have been issued a notice for further investigation in this matter, it would not mean the material placed on record has lost its legal value and cannot be considered against them. The bail matters are to be decided on the basis of

tentative assessment of the material available on record, and not on the evidence or consideration extraneous and not yet part of the case. Furthermore, in our humble view, such a ground i.e. fresh investigation does not regulate the principles ruling consideration in bail matters. For the reason further investigation does not amount to further enquiry in the evidence already collected but it is to discover and add further evidence in respect of a particular allegation. So even on this ground the petitions not found fit for relief must fail.

25. After we find aforesaid petitioners, seeking pre arrest bail, *prima facie* connected with the alleged offence, apparent absence of mala fide on the part of NAB to implicate them in this case also assumes importance and cannot be overlooked. Neither the petitioners at the time of arguments hinted to their false implication in the case out of some malice, nor we found any evidence in this connection available on record. Their insistence was only on the ground that they had nothing to do with accused Agha Siraj Khan Durani and that they had purchased the properties from their own resources which we, as discussed above, find unsustainable and shorn of required virtue.

26. Now we come to the case of family members of accused Agha Siraj Khan Durani (his wife, a son and three daughters). It is noted, they have been identified as Benamidar owners of certain properties like plots, flats, bungalows, vehicles, etc. Some of such assets are said to have been declared undervalued and some have not been at all. The NAB's case is that accused Agha Siraj Khan Durani provided money earned from corruption to buy these properties. In support, textual evidence i.e. pay orders issued in the name of his servants and cronies has been placed on record. In fact, petitioner Tufail Ahmed Shah' counsel in arguments admitted to have done so. In our humble view, all this material *prima facie* tends to incriminate only accused Agha Siraj Khan Durani and not his family members. Allegation to provide finance to purchase the properties is against him, and not against his family members. If anyone, it is he *prima facie* who has to be held accountable for it. Plus, ostensibly, there is no evidence or even allegation that his family members were either privy to his alleged acts of depravity, aiding and abetting him, or in knowledge that the money earned through illegal means was being used by him for purchasing the properties in their name. They have never held a public office nor is there allegation that by using office of accused Agha Siraj Khan Durani, they were able to generate resources and purchased the properties.

27. It is commonly known in our society, recognized almost as a convention, that parents purchase property in the name of their children, not for any base reason but only to ensure their safety, security and welfare in future. It is not disputed that accused Agha Siraj Khan Durani is a politician and has held different positions. Therefore, when he buys a property in the name of his wife or children, or makes payments at their behest for this purpose, there would normally be no reason for them to get alarmed or suspect that he has done corruption and is providing money from the wealth earned by him as such. Normal presumption, his children or for that matter any prudent mind would get, would be of his acting *bona fide* and providing the amounts from his legitimate sources of income. Unless, of course, either inverse is an established and verified fact or the payments are grotesquely incongruous to his known wealth. Since *prima facie* there is no evidence that his family members either knew of his alleged vile means of income or his covert spree of sale/purchase of the assets through his agents etc., or the fact that he was using the wealth earned thus for buying the properties in their name, an opinion to deem available evidence as sufficient to connect them with the offence cannot be formed with certainty. When this is the situation and the prosecution has yet to produce such evidence in the trial, their case would fall within purview of further enquiry and they would be held entitled to relief of bail.

28. Petitioner **Aslam Pervaiz Langah** (C.P.No.D-2235/2019) is stated to a broker/estate agent. He is stated to have facilitated accused Agha Siraj Khan Durani in sale/purchase of certain assets, some of which are Benami. But there is nothing palpably incriminating in this, this is what a realtor does to earn his livelihood. *Prima facie* his role is of doing business with accused Agha Siraj Khan Durani or with the ones acting on his behalf. There is no material to show that he was in collusion with him in his alleged depraved acts of earning money through despicable means and/or has any concern with his position and wealth or the means he has used to acquire both. Unless the evidence to establish his complicity with accused Agha Siraj Khan Durani for creating layers to conceal his property or income is produced in the trial, his case would fall within the scope of further enquiry and he would be entitled to relief of pre arrest bail.

29. Petitioner **Gulzar Ahmed**'s case (C.P.No.D-2976/2019) is almost on identical footings. He is said to have aided and abated accused Agha Siraj Khan Durani in acquiring illegal assets; and utilizing accounts of PW Sadaf Chohan and Syed Mobin Saeed by parking money therein for such

purpose. There is however statement of only PW Sadad Chohan In this regard on record. But her statement tends to incriminate herself rather than accused Gulzar Ahmed. She says that the money was deposited in her account in Meezan Bank (by Gulzar Ahmed) and that she had issued cheques for withdrawing the same. She does not allege a fraud, force or specious conduct by Gulzar Ahmed to mislead her into this manoeuver. While she claims that the money was parked into her account by Gulzar Ahmed but admits at the same time that it was done by him on her own request as she wanted to improve statement of her bank account for applying for UK visa. Albeit her naivety is striking and eludes common sense, but in any case except her statement on the point, no material has been collected in the investigation. It is ostensibly obvious that it is she whose account was used, with her consent, and it is she who withdrew the amounts through her cheques which were used in buying the properties. Nonetheless, she has not been arraigned in the case, and instead the one who, she claims, without any proof, deposited the money in her account has been arrayed as accused. Regarding transactions of 600 million found in his account, relevant evidence that this amount either belongs to or was parked by accused Agha Siraj Khan Durani and was utilized for purchasing assets on his behalf by this petitioner is yet to be produced by the prosecution in the trial. We therefore find the petitioner's case to be of further enquiry and hold him entitled to pre arrest bail on both *mala fide* ground and merit.

30. It is now settled that to decide a question of entitlement of an accused to relief of pre-arrest in a pending case, not only element of malice on the part of complainant or prosecution but the merits of the case are to be looked into. If the accused's case on merits is found to entail further enquiry into his guilt and there are no reasonable grounds to believe that he is involved in the reported offence. He would be extended such relief irrespective of the fact whether or not there is any material indicating malice on the part of prosecution or complainant to implicate him in the case. In our view, although there is no apparent element of malice on the part of NAB to implicate these petitioners i.e. family members of accused Agha Siraj Khan Durrani and alleged realtors in this case, yet on merits they have got a good case for consideration, and therefore we hold them entitled to relief of pre arrest bail.

31. In view of foregoing discussion, the petitions of **Agha Siraj Khan Durrani** (C.P.No.D-2356/2019), **Zulfiqar Ali Dahar** (C.P.No.D-2236/2019),

Shamshad Khatoon (C.P.No.D-1851/2019) **Munawar Ali** (C.P.No.D-586/2020) **Ghulam Murtaza** (C.P.No.D-584/2020) **Muhammad Irfan** (C.P.No.D-1559/2021) **Shakeel Ahmed Soomro** (C.P.No.D-6623/2019) **Gulbahar Lohar Baloch** (C.P.No.D-585/2020) **Tufail Ahmed Shah** (C.P.No.D-1776/2019) **Mitha Khan** (C.P.No.D-1850/2019) **Syed Muhammad Shah** (C.P.No.D-8474/ 2019) are dismissed.

32. While petitions of Mrs. **Naheed Durrani** (C.P.No.D-1637/2020), **Sara Durrani** (C.P.No.D-1639/2020), **Shahana Durrani** (C.P.No.D-1640/2020), **Sonia Durrani** (C.P.No.D-1641/2020), **Aslam Pervez Langah** (C.P.No.D-2235/2019), **Gulzar Ahmed** (C.P.No.D-2976/2019) and **Agha Shahbaz Ali Khan** (C.P.No.D-1638/ 2020) are allowed and their bail is confirmed on the same terms and conditions they were granted ad interim pre arrest bail on.

33. The observations herein above are tentative in nature and shall not prejudice the case of either party on merits before the trial court.

JUDGE

JUDGE

IN THE HIGH COURT OF SINDH AT KARACHI

C.P.No.D-2356 of 2019 & others

Schedule of moveable and immovable

Properties found held by Agha Siraj Khan Durani and his

Family members.

S#	Property	Year of Purchase	cost price shown to NAB (Rs.)	Cost actually paid (Rs)	Owner
1	Vehicle No. BD-7197 (Toyota Land Cruiser 2006)	15-Aug-2007	1,920,000	5,500,000 (Approx Value)	Agha Siraj Durrani
2	Vehicle No. CT-4343 (Toyota Hilux 2008)	15-Oct-2010	2,400,000	2,500,000 (Approx Value)	Agha Siraj Durrani
3	Vehicle No. BN-786 (Toyota Land Cruiser 2011)	8-May-2012	14,600,000	19,500,000 (Approx Value)	Agha Siraj Durrani
4	Vehicle No. CV-0786 (Toyota Hilux 2011)	15-May-2013	Not Declared	3,500,000 (Approx)	Agha Siraj Durrani
5	Weapons	---	1,500,000	1,500,000 (Not Verified)	Agha Siraj Durrani
6	Prize Bonds		14,800,000	14,800,000	Agha Siraj Durrani
7	Investment in Flat No. PT2-15-1506 Emaar Giga Crescent Bay, Karachi.	23-Apr-2014	22,985,280	26,816,160 (Verified)	Sarah Durrani
8	Banglow No. 48, 14th Street Phase-V, DHA, Karachi		2,946,000	-----	Naheed Durrani
9	Banglow No. 49, 13th Street Phase-V DHA Karachi	7-May-2009	Not Declared	34,000,000 (land cost) + 44,384,400 (construction Cost) =78,384,400 (Verified)	Naheed Durrani
10	Villa No. 17 Jhandala Road, Khara Gali District Abbottabad	2-May-2018	3,950,000	27,000,000 (verified)	Naheed Durrani
11	Vehicle ARH-220 (Mercedes Benz 2006)	30-Aug-2008	1,250,000	1,885,000 (Approx Value)	Naheed Durrani
12	Vehicle No. AHX-741 (Toyota Corolla 2005)	8-Jun-2005	not declared	800,000 (Approx)	Naheed Durrani
13	Flat No. 1 on plot No. 21-C, 1st Floor 6th Zamzama Tower, Commercial line	6-May-2015	5,650,000	5,650,000 (Verified)	Sonia Durrani

	Phase-V DHA, Clifton Cantonment Karachi				
14	Car AZS-786 (Honda Civic 2013)	22-Mar-2013	1,300,000	2,392,000 (verified from record)	Sonia Durrani
15	Investment in Flat No. PT1-12-1206 in Emaar Giga Crescent Bay Karachi	19-Aug-2014	23,661,626	27,605,233 (Verified)	Sonia Durrani
16	Investment in Flat No. PT1-16-1603 in Emaar Giga Crescent Bay Karachi	7-May-2014	23,110,828	26,962,633 (Verified)	Shahana Durrani
17	Apartment No. 02/K 2nd Floor Plot No. 02 Sector F-11/1 Islamabad		17,000,000	17,000,000 (yet to verified)	Kausar Durrani
18	Apartment No. 2&3 Saira Cottage at Burban Marri	23-Feb-2009	2,500,000	2,500,000 (yet to verified)	Kausar Durrani
19	Motor Vehicle BJ-0786 Toyota Jeep		3,500,000	3,500,000	Kausar Durrani
20	Commercial Industrial Plot No. 10-C 200 SQ: Yards Badar Commercial Street No.6 Phase V (ext) DHA Karachi	3-Apr-2012	3,350,000	78,000,000 (land cost) + 19,557,600 (construction Cost) =97,557,600 (Verified)	Agha Shahbaz
21	Motor Vehicle E-0050SP Jeep 1952	30-Oct-1994	300,000	300,000	Agha Shahbaz
22	Motor Vehicle CT-0786 (Hummer 2008)	20-May-2010	3,000,000	8,500,000 (Approx)	Agha Shahbaz
23	Vehicle AYP-786 (Mercedes Benz 2010)	16-May-2012	1,950,000	25,283,000 (Verified from record)	Agha Shahbaz
24	Creek Vista Apt No. 02, 7th Floor Block-H Type 4 Bed DHA Karachi	16-Jun-2011	Not Declared	40,000,000 (Approx Value)	Sanam Durrani
25	Vehicle No. BP-0786 (Toyota Land Cruiser 2010)	7-May-2013	Not Declared	8,000,000 (Approx Value)	Sanam Durrani
26	Vehicle No. AND-477 (Suzuki Alto 2007)	29-Mar-2007	Not Declared	499,000 (Verified from record)	Sanam Durrani
27	Bank Account No01910002060693 33 At UBL Kh—e-Ittehad Branch Karachi	Closing balance as on 21-04-2019		28,596,043	Agha Shahbaz
Total value			151,673,734	479,477,069	

**LIST OF BENAMI PROPERTIES OWNED/HELD/DISPOSED OF
ACCUSED AGHA SIRAJ DURANI**

S#	Property	Year of Purchase	Year of Sale	Purchased in name of benamidars	Sold to	Amount of Sale (Rs).
1	Plot No. 115/1 8th Street Phase-VI DHA Karachi (500 Sq Yards)	2011	2014	Ghulam Murtaza	Salma Irshad	25,250,000
2	Plot No. 115 / II, 8th Street Phase-VI DHA Karachi (500 Sq Yards)	2011	2014	Munawar Ali	Ismat Fatima Ali	---
3	Plot No. 106/1 3rd Street Approx 1000 Sq Yds Phase-VI DHA Karachi	June 2015	2017	Shakeel Ahmed Soomro	Abdul Rehman	161,000,000
4	"Plot No. 169/I 25th Street Approx 1000 Sq Yds Phase-VIII DHA Karachi"		Feb 2018	Shakeel Ahmed Soomro	Ahmed Bawany	166,250,000
5	Residential Land Measuring 40 Acres from NC No. 243 in Deh Narather, Tapo Songal Taluka Shah Mureed District Malir	Jun-2012	Aug 2018	Munawar Ali	Mustahkum Iman Builders	240,000,000
6	"Plot No. 66/II Khayaban-e-Amir Khusro Approx 1000 Sq Yds Phase-VI DHA Karachi"	Jan 2013	Feb 2018	Gulbahar Lohar Baloch	Mr. Sohail	212,500,000
7	Banglow No.A-3, Khayaban-e-Tanzeem DHA Phase V Karachi	June 2011		Muhammad Irfan	In possession of accused Agha Siraj since purchase	240,000,000 (Market Value)
Total value of Benami Properties Rs. 1,045,000,000						